

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE THOMAS MAKI,

Petitioner,

Case No. 07-12718

Hon. David. M. Lawson

v.

SHERRI BURT,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

The petitioner, George T. Maki, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254, alleging that the trial court miscalculated the sentencing guidelines and violated his right to jury trial by increasing his sentence based on factors not submitted to a jury or proven beyond a reasonable doubt, and not conceded by the petitioner. The Court denied the petition and will now consider whether to issue a certificate of appealability.

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, “a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

The petitioner filed his petition for a writ of habeas corpus alleging that the trial court miscalculated the sentencing guidelines with respect to Offense Variables four, six, and seven, and violated his right to jury trial by increasing his sentence based on factors not submitted to a jury or proven beyond a reasonable doubt, and not conceded by the petitioner. The Court determined that the first claim was not cognizable on federal habeas review because it was based solely on state law, and the second claim lacked merit because it was foreclosed by the Sixth Circuit's ruling in *Chontos v. Berghuis*, 585 F.3d 1000, 1002 (6th Cir. 2009). Reasonable jurists could not debate that this Court correctly denied the petition.

Accordingly, it is **ORDERED** that a certificate of appealability is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: July 15, 2010

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 15, 2010.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI